

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

3
4 **SUMMARY ORDER**

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6 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL**
7 **REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS**
8 **OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS**
9 **OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A**
10 **RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL**
11 **OR RES JUDICATA.**

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13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the United
14 States Courthouse, Foley Square, in the City of New York, on the 14th day of August, two
15 thousand and six.

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17 PRESENT:

18 HON. BARRINGTON D. PARKER,
19 HON. RICHARD C. WESLEY,
20 HON. PETER W. HALL,
21 *Circuit Judges.*

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24 Federico Marron and Florencia Marron,
25 *Petitioners,*

SUMMARY ORDER
 No. 05-3470-ag

26
27 v.

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30 Alberto Gonzales, Attorney General of the United States of America,
31 *Respondent.*

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34 For Petitioner: Alan Michael Strauss, (Stanley H. Wallenstein, *on the brief*); New York,
35 NY.

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37 For Respondent: Margaret M. Kolbe, (Varuni Nelson, *on the brief*), Assistant United States
38 Attorneys (*for* Roslynn R. Mauskopf, United States Attorney for the
39 Eastern District of New York); Brooklyn, New York.

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41 ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND

1 DECREED that the petition for review be DISMISSED.

2 Petitioners Federico and Florencia Marron, natives and citizens of Mexico, petition for
3 review of an order of the Board of Immigration Appeals (“BIA”), affirming without an opinion a
4 decision of an Immigration Judge (Kenneth Josephson, *IJ*) denying cancellation of removal relief
5 pursuant to 8 U.S.C. § 1229b(b)1. When the BIA summarily affirms the IJ’s decision, we review
6 the decision of the IJ directly. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). Familiarity
7 with the record below and issues on appeal is presumed.

8 “The Attorney General is accorded discretion to cancel the removal of a nonpermanent
9 resident if that alien can demonstrate (1) that he has been ‘physically present in the United States
10 for a continuous period of not less than 10 years immediately preceding the date of [his]
11 application’; (2) that he has been ‘a person of good moral character during such period’; (3) that
12 he has not been convicted of any of the disqualifying crimes specified in 8 U.S.C.
13 § 1229b(b)(1)(C); and (4) ‘that removal would result in exceptional and extremely unusual
14 hardship to [his] spouse, parent, or child, who is a citizen of the United States or an alien
15 lawfully admitted for permanent residence.’” *De La Vega v. Gonzales*, 436 F.3d 141, 142-143
16 (2d Cir. 2006) (quoting 8 U.S.C. § 1229b(b)(1)). The IJ found that the petitioners met their
17 burden to establish physical presence and good moral character but denied the application finding
18 they had not met the standard for the final element of cancellation of removal – they failed to
19 demonstrate “exceptional and extremely unusual hardship” to their three citizen children.

20 In deciding whether this Circuit has “jurisdiction to review the BIA's denial of cancellation
21 of removal when that denial was based on the BIA's rejection of petitioner's claim of ‘exceptional

1 and extremely unusual hardship,” we have held that “the BIA's denial of cancellation of removal
 2 on that basis is a discretionary judgment[; therefore,] 8 U.S.C. § 1252(a)(2)(B)(i) deprives us of
 3 jurisdiction to review petitioner's claim.” *Id.* at 143-144. Furthermore, we have stated that “(1)
 4 ‘exceptional and extremely unusual hardship’ determinations by the BIA are discretionary
 5 judgments and (2) we therefore lack jurisdiction to review such judgments in accordance with 8
 6 U.S.C. § 1252(a)(2)(B)(i).”¹ *Id.* at 145-146.

7 Thus, we lack jurisdiction to review the IJ’s discretionary determination regarding
 8 “exceptional and extremely unusual hardship” and his decision to deny cancellation of removal.
 9 *See Id.* at 144-146; 8 U.S.C. 1252(a)(2)(B)(i). In addition, “because petitioner does not raise any
 10 colorable ‘constitutional claims or questions of law,’ Section 106 of the REAL ID Act does not
 11 provide us with jurisdiction here.” *De La Vega*, 436 F.3d at 146; *see* 8 U.S.C. § 1252(a)(2)(D).

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 13 We have considered petitioner’s remaining contentions and find them to be without merit.
 14 The petition for review is therefore DISMISSED.

¹ 8 U.S.C. § 1252(a)(2)(B) provides the following:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review--

(I) any judgment regarding the granting of relief under section 1182(h), 1182(I), 1229b, 1229c, or 1255 of this title.

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FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____